

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6195

BILL NUMBER: SB 290

NOTE PREPARED: Dec 22, 2014

BILL AMENDED:

SUBJECT: Ephedrine and Pseudoephedrine.

FIRST AUTHOR: Sen. Glick

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill provides that materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine are Schedule III controlled substances that may be dispensed only by prescription. The bill repeals: (1) the law allowing the dispensing of ephedrine and pseudoephedrine without a prescription subject to certain restrictions; and (2) provisions related to that law.

Effective Date: July 1, 2015.

Summary of NET State Impact: The fiscal impact of this bill has four components.

- (1) The bill is estimated to result in about \$1,440 annually in additional state Medicaid cost.
- (2) There is an estimated cost avoidance of approximately \$3.1 M for the Indiana State Police due to the decline in the need to detect and clean up clandestine laboratory sites. Resources could be directed to other priorities.
- (3) Sales tax revenues would decrease by an estimated \$1.7 M as a result of changing the status of products containing ephedrine and pseudoephedrine from over-the-counter to Schedule III (prescription drug) status.
- (4) Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase.

Explanation of State Expenditures: *Medicaid Expenditures:* If pseudoephedrine products were changed from over-the-counter (OTC) status to a prescription Schedule III drug, a dispensing fee of up to \$3.90 would

be paid to the pharmacy provider. The Office of Medicaid Policy and Planning (OMPP) estimates 1,100 annual claims for pseudoephedrine products would result in additional annual Medicaid dispensing fees of \$4,290. The state matching share of the additional cost would be about \$1,440.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 33.5%. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 66.5%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

[Currently, Medicaid requires prescriptions for OTC medications for Medicaid members. Only those OTC medications included on the Medicaid formulary are considered to be covered drugs. The formulary includes pseudoephedrine products for Medicaid individuals 4 through 17 years of age. Medicaid does not pay a dispensing fee to pharmacies for OTC claims.]

Indiana State Police (ISP): The ISP has reported that a reduction in costs would be expected to be realized as a result of placing ephedrine and pseudoephedrine on the Schedule III list. The ISP anticipates the impact of requiring a prescription for these compounds would be a decrease in the level of resources currently used to dismantle clandestine labs and the associated environmental cleanup. During CY 2013, the ISP reported 1,808 methamphetamine (meth) labs. The ISP estimates that the average cost of cleanup per meth lab is about \$1,793, including supplies, equipment, laboratory analysis of evidence, and personnel expense. The total cost related to cleanup is approximately \$3.1 M state dollars. An additional \$127,349 in federal funding was spent for disposal costs in FY 2013. The ISP average cost does not include costs to other state agencies, social service organizations, remediation of property, incarceration, or medical expenses incurred.

In 2010, the state of Mississippi passed legislation requiring prescriptions for ephedrine and pseudoephedrine. According to 2011 and 2012 data reported to the Drug Enforcement Administration, National Seizure System, Mississippi experienced a decrease in seized meth labs of 98%. (321 labs seized in 2011; 5 labs seized in 2012.) If this level of reduction could be realized in Indiana as a result of the bill, meth lab seizures could drop to 29 from 1808, and approximately \$3.1 M in ISP resources currently used for meth lab cleanup could be directed to other priorities.

Criminal Offenses: Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase if more people are incarcerated as a result of adding to the list of Schedule III controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule III controlled substance.

Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedule may increase the number of driver's license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,956 in FY 2014.

Indiana Professional Licensing Agency (IPLA) and Board of Pharmacy Expenditures: The IPLA and the Board of Pharmacy estimate that placing ephedrine and pseudoephedrine on the Schedule III list would require no additional funds for implementation or surveillance.

Excess Handgun License Fees: Handgun fees are placed in the state General Fund, and any revenue in excess of \$1.1 M is transferred to the Excess Handgun License Fee Fund for use by the ISP to (1) operate and maintain a central repository for criminal history data, and (2) to establish, operate, or maintain an electronic log to record the sale of drugs containing ephedrine or pseudoephedrine. Currently, the fund is not used for this second purpose, but if drugs containing ephedrine or pseudoephedrine require a prescription, the log provisions under IC 35-48-4-14.7 would not apply.

Additional Information: Ephedrine and pseudoephedrine are known as precursor drugs necessary to the production of methamphetamine. Indiana currently requires the sale of cold and allergy products containing these drugs to be limited and tracked by purchaser with the products maintained behind the counter or in full view of a pharmacist. Clandestine meth labs are considered a public safety menace, being explosive, toxic, and environmentally pervasive. The costs of dealing with meth lab investigation, dismantling, and cleanup affect the budgets of numerous state agencies.

The ISP directly seizes about 95% of the total number of labs located and dismantled in the state. ISP data indicates that in 2008, it seized 1,059 labs; in 2013 there were 1,808 seizures, an increase of about 70%. The number of clandestine labs has increased about 147%, from 732 reported in 2002 to 1,808 reported in 2013. Each location is counted as a lab, although multiple batches may be in progress. In 2012, 81% of labs seized were one-pot or small batch labs.

Two states, Oregon and Mississippi, have enacted legislation requiring a prescription for products containing ephedrine or pseudoephedrine. Oregon's data demonstrates declines in clandestine labs for three phases of limitations on purchases of ephedrine and pseudoephedrine. The first decline was associated with a statute that moved the products behind the counter. The second phase required photo identification and logging of purchases which appeared to be responsible for further declines in meth labs. The third phase, effective since 2006, designated ephedrine and pseudoephedrine as prescription drugs. In 2003, Oregon reported 473 clandestine labs in the state. Since the prescription requirement went into effect, the number of meth labs in Oregon was reported to be 7 in 2012, 9 in 2013, and 5 for the first 10 months of 2014. The decrease from 2003 through 2013, represents a decrease of 98.1%. In addition, the majority of the reported meth lab incidents from 2007 through 2011 were dump sites, partial, or remnants - not operational meth lab incidents.

Explanation of State Revenues: *State Sales Tax Revenue:* Sales tax revenues would likely decrease as a result of changing the status of products containing ephedrine and pseudoephedrine from OTC to Schedule III. Prescription drug purchases are exempt from sales tax, while OTC products are taxed. The ISP reported that 2.04 million boxes of pseudoephedrine were reported sold in the state in CY 2013 according to the National Precursor Log Exchange (NPLeX) system. If the average cost of the product is assumed to be \$12 per box, total taxable sales in CY 2013 would have been about \$24.4 M. Given these assumptions, the amount of annual gross sales tax revenue that would be lost as a result of the change in status is estimated to be \$1.7 M. The actual impact would depend on the number of ephedrine and pseudoephedrine sales that would actually be transferred to prescription sales and the level of OTC product substitution that would occur as a result of the lack of availability of ephedrine and pseudoephedrine. Sales tax revenue is deposited in the state General Fund (98.848%), the Motor Vehicle Highway Account (1%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Excise Tax Revenue: Revenues may increase because illegal controlled substances are subject to a \$40-per-gram, or other unit, excise tax. However, the expected increase in excise tax revenue is minimal - the revenues in FY 2012 were about \$175 from all scheduled controlled substances excise taxes. Criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

(See *Explanation of State Expenditures* regarding federal reimbursement in the Medicaid Program.)

Criminal Offenses: If additional cases are filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

In addition, persons convicted of a drug-related offense may also be liable for a drug abuse, prosecution, interdiction, and correction fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the state user fee fund and distributed to state and local programs.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$4.4

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

In addition, if a person is convicted of a drug-related offense, a sentencing court may assess a marijuana eradication fee of not more than \$300, if the county has established a Weed Control Board. The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund. Revenue collected from the alcohol and drug services program fee is deposited in the county or city or town user fee fund.

State Agencies Affected: IPLA, Board of Pharmacy; FSSA, OMPP; ISP; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: FSSA, ISP, IPLA, Board of Pharmacy, *Crime in Oregon Report*, June 2010, Criminal Justice Commission, State of Oregon at: http://www.oregon.gov/CJC/docs/Crime_Report_2010.pdf?ga=t; Oregon statistics at <http://www.oregondec.org/OregonMethLabStats.pdf>; and DEA State Fact Sheets at http://www.justice.gov/dea/pubs/state_factsheets/oregon.html, Statement of Senator Ron Wyden of Oregon to the Senate Caucus on International Narcotics Control Hearing, April 13, 2010, at <http://drugcaucus.senate.gov/wyden-pseudoephedrine-hearing-4-13-10.html>; DOC; ISP; Doug Gosser,

Indiana Sheriffs' Association, 317-356-3633; www.in.gov/meth/. Mississippi Statistics reported to El Paso Intelligence Center, National Seizure System at:
<http://www.justice.gov/dea/resource-center/meth-lab-maps.shtml>

Fiscal Analyst: Kathy Norris, 317-234-1360.